

)	CRIMINAL FILE
UNITED STATES OF AMERICA)	NO. 12-CR-113 (ADM/FLN)
)	
vs.)	
)	Courtroom 13 West
LEWIS PATE)	Wednesday, August 15, 2012
)	Minneapolis, Minnesota

VOLUME III

A P P E A R A N C E S:

Court Reporter: **TIMOTHY J. WILLETTE, RDR, CRR, CBC, CCP**
 Official Court Reporter - U.S.D.C.
 1005 United States Courthouse
 300 South Fourth Street
 Minneapolis, Minnesota 55415
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1 (9:30 a.m.)

2 **P R O C E E D I N G S**

3 **IN OPEN COURT**

4 (Defendant present)

5 (Without the jury)

6 THE COURT: Good morning. Please be seated.

7 The record should reflect we are outside the
8 presence of the jury.

9 The evidence concluded yesterday in this matter.
10 Counsel should have both been provided a copy of the Court's
11 proposed set of jury instructions, which are 30 pages, 26 in
12 number.

13 Forrest, we didn't talk about the special verdict
14 form, but it will be very straightforward, but we need to do
15 that.

16 (Discussion off the record between the Court and
17 clerk)

18 THE COURT: There are 24 instructions and I think
19 you would probably have 28 pages of instructions, is that
20 right?

21 MR. PAULSEN: Yeah, 28.

22 THE COURT: I have a couple other little things
23 that I add on that aren't in the standard set.

24 Does the Government wish to note for the record
25 any objections to the Court's proposed instructions?

1 MR. PAULSEN: No, your Honor. They're fine.

2 THE COURT: All right. Does the defense,
3 Mr. Olson?

4 MR. OLSON: No, your Honor. They're fine.

5 THE COURT: I think for purposes of the record we
6 should indicate -- do you know the number of the instruction
7 with regard to the --

8 THE CLERK: Fourteen.

9 THE COURT: Instruction No. 14 has the Court
10 giving the instruction with regard to the fact that Mr. Pate
11 did not testify and not to draw any inference from that, and
12 I take it that you affirmatively request that be included in
13 the set of instructions, Mr. Olson?

14 MR. OLSON: Yes.

15 THE COURT: All right. So noted.

16 We will draw up a special verdict form which will
17 simply say the count, guilty or not guilty, and make sure
18 you have an opportunity to see that. Otherwise, I think
19 we're ready to begin arguments at 10:00 o'clock.

20 MR. PAULSEN: Right. And there's a forfeiture
21 allegation in the indictment. It's moot. There's going to
22 be no claim to the gun, win or lose here.

23 THE COURT: All right. Any other loose ends that
24 need to be addressed?

25 MR. OLSON: No, your Honor.

1 THE COURT: Okay. We'll get going sharply at
2 10:00 o'clock. I don't know the status of the jury yet, but
3 I've been hearing them come in, so I think we'll hopefully
4 have everybody right at 10:00.

5 Thank you. Court will be in recess till
6 10:00 a.m.

7 (Recess taken at 9:45 a.m.)

8 * * * * *

9 (10:06 a.m.)

10 IN OPEN COURT

11 (Jury enters)

12 THE COURT: Good morning. Please be seated.

13 As I told you when we adjourned yesterday, the
14 evidence in this case is completed. We're going to begin
15 this morning with the closing arguments of counsel. The
16 first argument will be given by Assistant United States
17 Attorney Jeffrey Paulsen on behalf of his client, the United
18 States.

19 Mr. Paulsen?

20 **GOVERNMENT'S CLOSING ARGUMENT**

21 MR. PAULSEN: As I told you when we started this
22 case on Monday, it's a simple case because there's just one
23 question you're going to have to decide: Did the defendant
24 (indicating) on March 20, 2012 possess Government Exhibit 1,
25 the Enfield revolver. That's the only issue, did he possess

1 it. The question is not did he shoot the gun that day. The
2 question is not did he assault someone with the gun that
3 day. The question is not even where did he get the gun, who
4 did get it from. You're not going to have to answer those
5 questions. The only question you're going to have to answer
6 is did he possess the gun on the day in question because
7 that's what he's charged with, being a felon in possession
8 of a firearm.

9 And Judge Montgomery is going to tell you that
10 there are three simple elements to that crime, three things
11 the Government has to prove beyond a reasonable doubt.

12 The first one, that the defendant --

13 THE COURT: I guess we don't have the monitors on,
14 so let me get those on for you.

15 (Pause)

16 THE COURT: We set? Thank you for letting me
17 know.

18 MR. PAULSEN: Three elements: One, the defendant
19 on the day in question had been convicted of a crime
20 punishable by imprisonment for more than one year.

21 She goes on to tell you: "You are instructed that
22 the Government and Lewis Pate have agreed that Lewis Pate
23 has been convicted of a crime punishable by imprisonment for
24 more than one year under the laws of Minnesota, and you must
25 consider the first element as proven."

1 And we'll come back to element two.

2 Element three, the firearm was transported across
3 a state or international line at some time during or before
4 the defendant's possession of it. I don't think there's
5 going to be any dispute about that. You heard from the
6 expert yesterday about how the gun was manufactured in
7 England back in the pre-World War II era and ended up in
8 Minnesota. The judge is going to tell you that: "If you
9 have found beyond a reasonable doubt that the firearm in
10 question was manufactured in a state or country other than
11 Minnesota and that the defendant possessed that firearm in
12 the state of Minnesota, then you may, but are not required
13 to, find that it was transported across a state line."

14 So, that leaves element two, the defendant
15 knowingly possessed a firearm, the one in question, on the
16 day in question.

17 So how do we know he did that? Well, some of the
18 best evidence comes out of his own mouth.

19 There's a few things that we know right off the
20 bat. We know that Mr. Pate was arrested inside of XXX
21 XXXXXXXXX on the day in question. We know that that gun,
22 Exhibit 1, was found inside of XXX XXXXXXXXX on the day in
23 question. And the evidence is going to show that I'm going
24 to go through in a minute that it is his gun, he admitted
25 it's his gun, and he knew that it was in XXX XXXXXXXX. So,

1 let's go through the evidence that shows those things.

2 First you have -- the first jail call was to that
3 girlfriend Vanessa, and he tells Vanessa -- and this is at
4 7:20 p.m. He tells Vanessa: "Well, I just need you to go
5 over there and get my money." And you know because you've
6 heard these calls that "money" is code for "gun." And whose
7 money is it? "My money," Mr. Pate says. Not somebody
8 else's money. It's "my money."

9 And to make sure she understands what he's talking
10 about is not really money, he goes on to tell her: "Yeah.
11 They tryin' to charge me wit' a firearm You feel what
12 I'm sayin'?" So, she gets it. She knows he's talking about
13 a gun.

14 And you know she knows -- you can tell she knows
15 he's talking about a gun, because later on in that same call
16 she says, talking in code: "What happens when they find the
17 money?" And she repeats the question: "What happens if
18 they," meaning the police, find the, quote, unquote,
19 "money"? He says: "Nothin'." Which prompts her to ask:
20 "Fingerprint? Or clean?" And Pate says: "Clean." Now,
21 you know they're talking not about money, because why would
22 anybody be worried about having their fingerprints on money,
23 so you know they're talking about a gun and it's Pate's gun,
24 Pate's gun, because he says: "My money." And that's not
25 the only time he'll say it. He's going to say it to all

1 three people.

2 Next call was to Fabre, Fabre White, and remember
3 she was someone that was at XXX XXXXXXXX. She was the one
4 at the front door with Amy, who didn't want the police to
5 come in and were telling the police that, no, there's nobody
6 in here but women and children. There's no adult male in
7 here.

8 But this is Government Exhibit 7. That last one
9 was Government Exhibit 6, but this is Government Exhibit 7
10 just a couple minutes later at 7:31 that night.

11 And Mr. Pate is telling her: "'Member when I was
12 in the bathroom, right?" And she says: "Yeah." And then
13 he says: "I need you to go get it." So he's talking about
14 something he needs out of the bathroom and you know what
15 that is.

16 That was a short call. I think you might remember
17 it kind of got cut off, so we have another call right after
18 that one and he follows up with what he wants her to do.
19 This is Exhibit 8 now, just a few minutes later, and he's
20 telling her: "Dude, just go back over there and go in the
21 bathroom."

22 Then we go to Government Exhibit 9. This one is
23 about a half hour later at 8:34 p.m. And this is
24 interesting here before we get into the other part of it.
25 Here on the phone he's coaching her. He's telling her what

1 to say if the police come and ask her what was going on.
2 Because what he says is, he's telling her: "[S]ee, I, I
3 told them, like, man, bullshit, ain't about not'in'.
4 Mo'fucker's bustin' at us, and we tried to run up in the
5 crib, and dude was in the back. You made it in the front,
6 and I pulled off and seen the law (UI) down the street."

7 That's what he wants her to tell the police, but
8 the problem is she says: "Well, I'm not talkin' to nobody.
9 I told them I don't know nothin' about nothin'." So she's
10 already given a statement to the police where she says: "I
11 don't know nothin' about nothin'."

12 And here later on in that same call Mr. Pate is
13 obviously a little worried. He says: "You is my baby,
14 though. Man, [] I know we gotta make it through this one,
15 'cause, uh, it might be a minute." He says: "It might be a
16 situation, though." So he knows if they find the gun, he's
17 going to be in trouble and he's already kind of forewarning
18 her about that possibility.

19 But he still doesn't realize that the police have
20 already gotten the gun in the search warrant, so he repeats
21 to her in the same call -- this is Government Exhibit 9, the
22 same call. He says -- oh, talking about Chris, "my
23 brother," talking about Chris. And Pate asks Fabre to call
24 him: "And tell him what the f[] happened, man, and I need
25 my money out that f[]in' bathroom. And so White then says:

1 [S]hould I ask Chris to ... get the money out o' there?"

2 And Pate says: "Yeah I need that tonight, done
3 tonight."

4 Remember, this is the call where Fabre, unlike the
5 previous Vanessa, hasn't gotten it yet. She thinks at this
6 point Pate might really be talking about money, so she asks:
7 "How much is in there?" "Huh?" She repeats: "How much is
8 in there?" And you remember his voice on that call? It's
9 like he's rolling his eyes, practically, and going: "Oh, my
10 god, dude." "You're not listenin' [to me]." And she says:
11 "I said how much is in the bathroom?" And he goes:
12 "[Y]ou're not listening, though." And then to make it real
13 clear what he's talking about: "You know what they're
14 chargin' me for, right?" And then she gets it. "Yeah."
15 "Okay. I'm listenin' now." And once again he says: "You
16 feel what I'm sayin'?" Just like when he was getting the
17 message across to Vanessa about the gun? "You feel what I'm
18 sayin'?" Same thing here.

19 And then, of course, you know he's talking about a
20 gun because he says: "I need that up out o' there." White
21 says: "How you know they didn't find it?", referring to the
22 police. And he says: "'Cause I ain't got charged. That's
23 how I know. Or they would've brought that m[]f[] down here
24 with me."

25 So, clearly talking about a gun, because if it's

1 money, you're not going to get charged; if it's a gun,
2 you're going to get charged, and he thinks they haven't
3 found it yet because I haven't been charged.

4 And then look at what he says here. He finally
5 realizes, yeah, "We're talkin' too much on the phone" and he
6 ends the call. Well, not before he tells her to try and do
7 that right now, "right now."

8 I forgot to mention this. You probably noticed it
9 in that same call. What does he say? "I need my money out
10 of that f'in bathroom." So again, just like Vanessa, he's
11 telling Fabre: It's my money, my gun.

12 Then the next call was with his brother Chris and
13 tells Chris the same thing. This is Exhibit 10. He says --
14 still using the pretext that it's money, tells Chris:
15 "Grab, grab my li'l change, man. Put that shit up, and ask
16 Morgan where that other shit at."

17 So he doesn't have to tell Chris to go in the
18 bathroom to find the gun, because he already did that once
19 before. Remember on that squad video?

20 Okay. We're at 15:32 and 52 seconds right now.
21 Watch Pate's lips move in about six seconds.

22 (Videotape played)

23 MR. PAULSEN: He mouths the word "bathroom" to
24 Chris, who's right outside the squad car, and I'll back it
25 up so you can see it again.

1 (Videotape played)

2 MR. PAULSEN: Then once again when he's talking to
3 Chris, what does he say? He says: "Grab my li'l change."
4 Not somebody's else's money or change, "my change." He's
5 told three people now that gun is my gun, Lewis Pate's gun.

6 And then, of course, the next day when he knows
7 they found the gun he tells the police the same thing, "It's
8 my gun," and they talk about the gun about three separate
9 times in the transcript

10 The first time is here. Sgt. Benner, after
11 they've let Mr. Pate tell his version of what happened that
12 day out on the street, they've listened to him, and then
13 Sgt. Benner says: "So, what about the gun? Your DNA gonna
14 be on the gun that was in the house?" At first Pate kind of
15 plays dumb and says: "What gun?" And Benner repeats the
16 question. "You don't wanta talk about it, that's fine. But
17 don't, don't," you know, meaning don't lie to me about it.

18 So Pate starts talking about the gun. He says --
19 first of all, after Benner talks about: "Is it worth it to
20 have a running gun battle in the middle o' the city durin'
21 the day?" Pate says: "It ain't. Then he says: "But I
22 ain't shoot though. I could've, but I ain't have it on me."
23 And he doesn't deny there's a gun that belongs to him. He
24 just claims he didn't have it on him. He goes on to say:
25 "I couldn't make it to it." He says: "Yeah, if I would've

1 had it on me, yeah, it pro'ly would've been a shoot-out.
2 Pro'ly would've. But I ain't shoot, though."

3 Then they talk about some other stuff for awhile
4 and then they come back to the gun and Sgt. Benner says:
5 "So, you wanta talk about the gun at all, where you got it
6 from, where it came from?" Pate says: "Here we go with
7 this shit, man," but then he answers the questions. He
8 says: "[B]ased on where I got it from, bought it from
9 somebody, but that was it." "Price?" Pate says: "Think
10 for a hundred," hundred dollars. Then they talk about what
11 caliber it is. Pate claims he doesn't know what caliber it
12 is. At the end he says: "No. I just bought that gun."

13 And then finally at the end Pate's telling him --
14 this is right near the end. He's saying: "Tellin' y'all
15 right now, all right? Old boy," meaning Paxton, "ain't got
16 not'in' to do with this. Ain't nobody got not'in' to do
17 wit' it, besides Fam'," meaning the other guy shot at me.
18 "I could've shot back at him, but I didn't have it on me, on
19 some real shit. If I'd've had it on me when he was in that
20 backyard, yeah, I'd've put that nigga dick in the dirt."

21 So, he doesn't deny that was his gun. He just
22 claims he didn't have it on him.

23 And the point is that even under his version of
24 events, he's still guilty of what he's charged with, being a
25 felon in possession of a firearm. Like I said at the

1 beginning, we don't have to prove that he had it out on the
2 street, that he shot it at anybody. We have to prove he
3 possessed it that day and the evidence shows he did. But
4 even though it's not something we have to prove, let me
5 address his version of events just briefly.

6 He says it was me and Fabre in a car and there was
7 one person shooting at us while we were in a car. Well,
8 that's not consistent with the evidence you heard, the
9 credible evidence you heard. The first witness, Geovanny,
10 he said no. There was three people on the street shooting
11 at each other. There was no car involved, three people on
12 the street.

13 And another thing that disproves Pate's version of
14 the events is, if there was one guy shooting at him while
15 he's in a car, why are there two different types of casings
16 found on Minnehaha Avenue?

17 And the other reason you can tell that his version
18 of not having the gun on him and his version of the shooting
19 incident is not correct is just by the way he and Fabre
20 reacted. I mean, supposedly, according to Mr. Pate, he and
21 Fabre have just been the victims of someone shooting at
22 them. Okay. How would a victim of a shooting react? You
23 might call the police. You might call 911. What does Fabre
24 do? You know, Fabre is a victim, just been shot at, and the
25 police are right there. You'd think she'd say, "Hey, we

1 just got shot at." What does she say? She lies to the
2 police. "No, nobody in here but us women and children, no
3 adult males in here. No, no, you can't come in and look.
4 You can't come in and look." That's not the way a victim
5 would react. And the same goes for Mr. Pate. I mean, if he
6 were a victim, why is he hiding? Why doesn't he come
7 forward?

8 Now, granted, by the time he's had a chance to
9 think up a story, he's got a story and he tells it to Fabre
10 on the phone. "This is what I want you to tell them, you
11 know, if they come to talk to you. Tell them that we were
12 the victims." Okay, he's got a story, but even under his
13 story, keep in mind he's still guilty as charged of what
14 he's charged with.

15 But does Mr. Pate have a motive to lie about
16 whether he had a gun on him when he was out on the street?
17 Well, of course he does. He doesn't want to get charged
18 with aggravated assault. That's what he's worried about.
19 That's why he asks, he asks at the start of that interview
20 with Sgt. Benner and Kylie Williamson, he says: "Wait a
21 minute. What am I charged with?" And they tell him, "Well,
22 right now you're charged with aggravated assault." So he
23 proceeds to tell them, "I didn't have a gun and I wasn't
24 shooting." Well, of course. He doesn't want to make
25 evidence against himself on the aggravated assault charge,

1 so he says, "I didn't have a gun. I'm the victim."

2 So, when you consider his story, you have to
3 consider his credibility, and what do we know about
4 Mr. Pate's credibility? Well, when he got caught, what's
5 the first thing he did? He lied to the cops three times.
6 He lied about his name, he lied about his date of birth, and
7 he falsely told Officer Nelson, "I've never been in
8 trouble." Well, you know that's not true. He's got a prior
9 felony conviction. Plus, he had all those traffic warrants
10 that day, but he says, "I've never been in trouble."

11 So, when you consider his version of what happened
12 that day, I think you have to take it with more than a grain
13 of salt, but what I'm telling you is, you can accept it all.
14 He's still guilty of what he's charged with, being a felon
15 in possession of a firearm, because when he was in XXX
16 XXXXXXXX with that gun, it was in his possession and
17 control. And even if you believe his version that he didn't
18 have it on him, he was going there to try to get it, he'd
19 put it there earlier, he's still guilty as charged, because
20 the judge is going to tell you there's two types of
21 possession. One type of possession is when you are actually
22 physically in possession of something, like money, okay? I
23 got a couple dollars on me. I'm in possession (indicating)
24 of this money. I also have a bank account over at Wells
25 Fargo Bank, and I'm not physically in possession of that

1 money, but that's my money. I own it and I can control it.
2 That's called constructive possession.

3 So, even if you believe that Mr. Pate's out on the
4 street, doesn't have his gun with him, his gun is back at
5 XXX XXXXXXXXX, it's okay. It's his gun, he admits it, and
6 he's in possession of it even though he's not physically
7 touching it at that point

8 So, once again, there's three simple elements we
9 have to prove. Two of them are not in dispute. The third
10 one, the evidence overwhelmingly shows he possessed the gun.
11 That's why I'm asking you to return a verdict of guilty on
12 the one-count indictment.

13 THE COURT: Thank you. We'll proceed to the
14 argument of the defense as given on Mr. Pate's behalf by his
15 counsel, Mr. Douglas Olson.

16 Mr. Olson?

17 **DEFENDANT'S CLOSING ARGUMENT**

18 MR. OLSON: The Government did not prove beyond a
19 reasonable doubt that Lewis Pate possessed that .38 caliber
20 revolver that was discovered in the bathroom at XXX XXXXXXXXX
21 on March 20th.

22 The crime that's charged here is possession of the
23 gun. It's not knowledge about the gun, it's not knowing
24 about the gun in the bathroom or even wanting it out of
25 here. The question is whether the Government has proven,

1 presented proof beyond a reasonable doubt that he possessed
2 that .38 caliber revolver on March 20th. That's where the
3 Government's proof fails. Let's talk briefly about the
4 facts.

5 The Government after going through a lot of
6 commotion and trying to tell you that he's the shooter and
7 presenting this and that has basically given up trying to
8 prove that theory, but what we do know in terms of facts,
9 we've got a statement to the police, we've got his phone
10 calls from the jail -- we'll get into that -- and we've got
11 the rest of the witnesses' testimony.

12 But what we know at the end of the day is that
13 Mr. Pate entered XXX XXXXXXXXX seconds or even
14 contemporaneously with the police being on the scene wearing
15 a white T-shirt, driving a car. We finally established that
16 yesterday through the testimony of Mrs. Moua. He pulls up
17 in a car, he's wearing a white T-shirt, he's not on his
18 feet, he's not wearing a hoodie, and he runs into the house,
19 and the police are there, they're on the scene. So we're
20 talking about a guy going into a house a very short period
21 of time, and that's what the facts are.

22 He's in the house a short period of time. There's
23 no testimony, there's no witnesses here testifying that they
24 ever saw him with a gun inside or outside the house.
25 There's no forensic evidence tying him to that gun found in

1 the bathroom, not on the gun, not on the towel, not anywhere
2 in the bathroom, not anywhere in the world of forensic
3 since. It doesn't exist. There's nothing tying him to that
4 gun, and that's the state of the facts.

5 And in addition, the idea that he's stashing this
6 gun at XXX XXXXXXXXX, that somehow he's converted a place,
7 he's got -- there's no evidence he's got any connection. He
8 doesn't live there, it's not his place, and so somehow the
9 Government wants you to believe that he's converted the
10 bathroom there into a stash house. I mean, where's that
11 evidence? Where's the evidence that he's got some
12 connection there, that he keeps his stuff there, that he's
13 got some goings-on there other than he ran into this place
14 and ran upstairs where he's found as the police arrive on
15 the doorstep? Where's this evidence of him screwing around
16 and hiding this gun? I mean, it just doesn't exist. It's
17 not your duty or obligation -- it's actually contrary to
18 your duty or obligation just to fill in the facts for the
19 Government when they don't have facts to back up their
20 theory. That's what they're asking you to do here.

21 Now, I'm going to mention this, but I'll try and
22 be brief on it, because as Mr. Paulsen has said, I mean,
23 they've given up this idea of trying to prove -- I mean,
24 he's not charged with shooting the gun. We all know that
25 and I know that, but they certainly presented evidence

1 concerning the shooting of the gun. Oh, the gun didn't have
2 the casings in it, doesn't match the casings, and they talk
3 about what the witness Geovanny said and this and that and
4 the other thing and they try and discredit his statement,
5 but then they've given up the idea that they know -- they
6 didn't attempt to prove that he was the shooter. So what's
7 all that about if it doesn't matter? They throw it out
8 there trying to suggest that, well, maybe he's the shooter.
9 Maybe he's a bad guy, maybe he isn't, maybe whatnot, but I
10 say it's all thrown out there to kind of confuse the issues,
11 prejudice Mr. Pate, think, well, maybe he's the shooter,
12 maybe he's a bad guy, when they know if this was a case
13 trying to prove an aggravated assault and he was a shooter,
14 horrible job and at the end of the day they gave it up.

15 And they could have -- if it was important to them
16 -- and you'd think it would be important to our Federal
17 Government. They could have tried to prove that he was the
18 shooter. Forensics, the gun shot residue test, the
19 sweatshirt. We know that the shooter wasn't wearing a white
20 T-shirt. He had on dark clothes, some kind of a dark hoodie
21 or something dark on him. So why do they present this
22 evidence about this sweatshirt found behind the living room
23 couch before the window? Why did they throw that out there
24 and why didn't we hear any talk about that? It's because
25 there's nothing to it. It's just a piece of evidence that

1 they throw out there just to confuse things.

2 But that sweatshirt, if it was important -- it was
3 important enough to present it, it's in evidence. If it was
4 important enough to bring it to your attention, introduce it
5 into evidence, where's the forensic follow-up? They could
6 have easily taken that in, taken hair samples and DNA off of
7 that piece of clothing and determine whether it was
8 Mr. Pate's or not. Instead they just kind of throw it out
9 there. But we know the shooter had on dark clothes, he
10 wasn't wearing a white T-shirt, and they just gave it up.

11 And as to the gunshot residue, they actually
12 tested it and then they called it off. They took the
13 sample, didn't test it. You could take the gunshot residue
14 off of his hands. They did take samples off of the
15 sweatshirt, off of his T-shirt. Where's that gunshot
16 residue evidence to prove that he was shooting a gun that
17 day? And they just gave it up.

18 They don't test the towel in the bathroom, the
19 towel. They don't make any attempt to try to find any
20 forensic evidence out of the rest of the house. It just
21 doesn't exist. And so they did a miserable job proving that
22 he was the shooter. And I agree that that's not the crime
23 charged here. You kind of ask the question, well, what was
24 that all about?

25 Now, the crime here charged is a crime of

1 possession. The question is whether he possessed not some
2 other gun, not some gun, but the .38 caliber Enfield
3 British-made revolver found in the clothes basket on
4 March 20th.

5 And there are two types of possession. There's
6 actual and constructive possession. I'll get to
7 constructive possession a little bit later on, but that's
8 easily dispensed with.

9 But as to actual possession, the Government's
10 proof fails. They got no witnesses that testified that he
11 had a gun. They got no forensics. No one inside the house
12 testified they saw him with a gun. So what this really
13 leaves is these -- and what this case comes down to is the
14 question of the phone calls and then his statement to the
15 police.

16 Now, these phone calls, if you break it down, they
17 establish that he knows about the gun in the bathroom and he
18 wants it out of there, but that doesn't establish that he
19 put it there or that he ever possessed that gun in the
20 bathroom. It shows that he knows there's a gun in the
21 bathroom, he wants it out of there, and as I indicated in my
22 opening statement, he wants it out of there because he
23 doesn't want to get jammed up for a gun that wasn't his.

24 And so he makes these series of calls and the
25 calls are what they are, all right? Get it out of the

1 bathroom, even if he says, "Get my money," whatever. He's
2 just trying to get this thing out of the bathroom. So we've
3 established that he knows it's in the bathroom. He wants it
4 out of there. But that doesn't establish possession and
5 that he put it there, and that's what you have to find
6 beyond a reasonable doubt to convict Mr. Pate here, is proof
7 beyond a reasonable doubt that he put the gun in the
8 bathroom and that he possessed it.

9 And I want to be clear. I mean, simply knowing --
10 there's nothing significant about, I mean, the fact that
11 this involves a gun. Knowing that there's a gun in a
12 bathroom in a house that you don't live at, don't have any
13 connection to, that's not a crime. The crime is one of
14 possession. I mean, we all know about -- you know, I know
15 people that have guns in their house. I don't possess them.
16 Knowing that there's a gun in a house, even if I want it out
17 of there, doesn't make you guilty of possessing it. All it
18 means is that you have knowledge of the gun being there, but
19 it doesn't establish possession in any way, shape or form.
20 So I got to stress that just knowing that there's a gun in
21 the bathroom and wanting it out of there doesn't establish
22 possession.

23 So, those calls really don't carry the day here.
24 They don't establish proof beyond a reasonable doubt that he
25 put the gun there. There's nothing in there about him

1 putting the gun in the bathroom, putting it in the clothes
2 hamper. There's nothing about how, where, why it happened
3 to end up there other than he knows about it, and that's the
4 state of the evidence and it's not up to you to fill in the
5 gaps.

6 Which then leads us to his so-called confession,
7 his 45-minute statement to the police. This 45-minute
8 statement to the police starts out, you know, he's a suspect
9 in this ag assault. The police officer comes down and wants
10 to talk with him about what happened with the shooting and
11 they spend -- of the 45 minutes, it's 40 or so minutes
12 before there's even mention of a gun.

13 And what does he say at the end of the day? He
14 says, "I never possessed it, never had it." He's also
15 honest enough to say that, "Maybe if I'd had a gun I might
16 have used it," but he never possessed the gun.

17 And when it comes down to the critical fabric of
18 that statement, the officer finally, page 59 -- they'd been
19 kind of dancing around about this and then he says: "All
20 right. So, you wanta talk about the gun at all, where you
21 got it from, where it came from?" Mr. Pate: "Here we go
22 with this shit, man, based on where I got it from, bought it
23 from somebody, but that was it." And the officer says:
24 "Hundred dollars?" Pate mimics him: "Think for a hundred."
25 And listen to it. "Hundred dollars?" He just says: "Think

1 for a hundred." He says: "Based on where I got it from,
2 bought it from somebody, but that was it." That's as much
3 detail as you can get out of Mr. Pate. "Got it from
4 somebody." He says: "A hundred dollars?" "Yeah, I think
5 for a hundred," and then he can't even tell what caliber of
6 gun this is or any other information about this gun. Then
7 he says: "I just bought that gun."

8 And when you break it down, that's really what
9 this supposedly reliable statement is that the Government is
10 hanging its hat on to bridge the gap to prove beyond a
11 reasonable doubt that that was his gun and that he put it in
12 the bathroom.

13 And where is the follow-up questions of Mr. Pate?
14 Where's the questions about: "Okay. When did you put it in
15 the bathroom? Is this your stash house? Did you dump it
16 off there on the day? How did you get it in the bathroom?"
17 Where's any questioning about that? Where's the where, the
18 when and the how. Where's the simple follow-up questioning
19 that any police officer would naturally follow up and lead
20 into wanting to find out if this information is really
21 accurate, reliable, and can you depend on it. No. And it's
22 this gotcha moment at the tail end of this 45-minute
23 discussion where he gets him to say something about a gun.
24 Doesn't ask him about the .38 caliber gun in the bathroom in
25 the clothes basket, a simple question: "How did it get in

1 the clothes basket? Are we talking about the same thing?"

2 And it's a simple, simple thing for a police
3 officer when you take a statement -- and it doesn't matter
4 if it's a suspect, a person in custody or a witness on the
5 street. You want to get some details and you want to follow
6 up and make sure your information is accurate and reliable
7 and you're all on the same page. And you've got a
8 24-year-old young man. He's in custody. He's talking with
9 this experienced 20-plus-year veteran police officer going
10 around in circles. He's trying to explain to him about how
11 he's being shot at that day, and that's one thing he was
12 consistent about right to the tail end. "I was being shot
13 at. I didn't have a gun. I didn't shoot at anybody." You
14 can listen to that and that's believable.

15 And so finally at the tail end of this thing he
16 gives him this vague, completely undetailed: "All right.
17 "The gun," "gun," "hundred bucks," "got it from somebody,"
18 "don't know the caliber," "just got it," and that's about
19 it.

20 And if you as jurors are being asked to rely on
21 this to really bridge the gap to convict Mr. Pate for
22 possession of that gun, proof beyond a reasonable doubt,
23 you're entitled to have some level of detail such that you
24 can determine that this is accurate, credible and reliable,
25 and there's absolutely no effort by the police officer at

1 all. And they say, well, yeah, what's the point at that
2 point in time, you know? Well, I know what the point is at
3 the time. It's the gotcha principle. He's gotcha, all
4 right? So then he just moves on. He doesn't care. He
5 doesn't want to do any follow-up, because that's easy. I
6 mean, that's easy. Well, easy isn't good police work and
7 it's certainly not easy on you as jurors trying to evaluate
8 the credibility and reliability of that. But even though he
9 says he had a gun, hundred bucks, got it from somebody,
10 don't know the caliber, just got it, it ain't a confession.
11 It's not a confession to possessing that gun in the clothes
12 basket at XXX XXXXXXXXX. I don't want you to read that in
13 there and just assume, well, we're all talking about the
14 same page and make sure that, you know, Mr. Pate was talking
15 about the same thing and that he's really giving a reliable
16 statement. Well, it's just not there. You shouldn't read
17 into it for the Government.

18 And police statements in custody can be
19 intimidating situations and a person might just say
20 something to appease the officer and exactly what Mr. Pate
21 ends up telling the officer. I mean, you can read right
22 into it, you can listen to it. He's going along with it and
23 says: "Yeah, yeah, yeah." Then he goes right back to it
24 and he says: "Listen, I didn't have the gun, all right? I
25 didn't have the gun. I didn't possess it." Maybe he wanted

1 it, he wanted to get to it, but he never possessed the gun
2 on March 20th, and that's the case here and that's the rub
3 here. And you can tell that he gets mad, he's frustrated,
4 and he's telling the officer, which he's been telling him
5 for most of the 40 minutes, that he never had the gun, never
6 possessed it even if he wanted it. Never got it.
7 Everything might be different. But it's no confession to
8 possessing the gun on March 20th, the one in the bathroom.
9 It's just not there. Listen to his words.

10 And at the end of the day he says: "Well" -- you
11 can tell it doesn't seem to matter to him, because he tells
12 the cop: "Well, I'm going on a probation violation anyhow,"
13 so he's just eating the gun. Maybe he doesn't want to get
14 anybody else in trouble. He puts it right in there to the
15 cop. He says: "Well, it doesn't matter, you know, I'm kind
16 of toast anyhow." So he explains why he would give this
17 undetailed and rather unremarkable statement to a police
18 officer, and then he goes back and says: "Didn't have the
19 gun, didn't shoot anybody," right up to the end, which
20 incidentally is the very first thing that he reported to
21 police when the police came by him. He did report to the
22 police. He came down the stairs and said, "I'm the one
23 being shot at" and they arrest him. That was his police
24 report and where did that get him? Handcuffs and brought
25 down to the police station.

1 I'm just going to talk for a second about this
2 constructive possession doctrine, because really what the
3 Government has really been aiming at is that, you know, the
4 gun in the clothes basket is his and he put it there, okay?
5 But there is this doctrine of constructive possession and
6 you're going to get the instruction from the Court. If you
7 have direct physical control, that's actual possession and
8 we know what that is. But: "A person who, although not in
9 actual possession, has both the power and the intention at a
10 given time to exercise dominion or control over a thing,
11 either directly or through another person or persons, is
12 then in constructive possession of it."

13 All right. The person -- if you don't actually
14 have it to be in constructive possession, that means you
15 have to have the power at a given time to exercise control
16 over it, and there's absolutely no evidence at all that he
17 had the power to exercise control over the gun that was
18 found in the bathroom at XXX XXXXXXXX. So don't make the
19 mistake of thinking because he's making phone calls from the
20 police station later on, he's trying to get this gun out of
21 the bathroom, that that's constructive possession. He
22 doesn't have power over that gun. I mean, he doesn't even
23 call the occupants of the house. He's got no connection to
24 this house. He's calling outsiders trying to get to
25 something that they clearly can't get to, so he doesn't have

1 any power to exercise control over this. That's certainly
2 true when he's at the police station, so don't make that
3 mistake.

4 And then this idea that somehow he's got the gun
5 stashed in the bathroom and that he's trying -- he's saying,
6 "I'm trying to get to it," now, where is that evidence that
7 this is his stash house or that he's got enough connection
8 to XXX XXXXXXXXX or he's running down there to get his gun
9 out of the bathroom. Where's the evidence that he's got
10 power or control over XXX XXXXXXXXX? I mean, it just doesn't
11 exist. There isn't any evidence about that, so you can't
12 fill in that gap. So this constructive possession case is
13 really thin to non-existent. The question is whether he put
14 the gun in the clothes basket and that's the evidence which
15 is missing here and certainly not proof beyond a reasonable
16 doubt.

17 Now, there's a fairly simple scenario here that
18 would account for Mr. Pate knowing about the gun in the
19 clothes basket and wanting it out of there so he doesn't get
20 jammed up with it without it being in his possession or his
21 gun. And I want to be clear about something, is that -- and
22 you get several instructions about this. The defense has no
23 burden of proof here, we don't have to prove anything, and
24 that's just a fundamental constitutional principle.

25 But it's easy to figure out scenarios by which

1 Mr. Pate would know that there's a gun in the bathroom.

2 Maybe he just knows that the occupants of XXX XXXXXXXXX keep
3 a gun in the bathroom.

4 Maybe in the brief moments that he's running into
5 XXX XXXXXXXXX from the back door and then to the upstairs
6 while the police are coming in he sees something. He sees
7 somebody stash a gun in the bathroom. That's hardly
8 outrageous. Maybe while he's in there these brief moments
9 while somebody's knocking on the door somebody tells him,
10 you know, "Lewis, you got a problem in the house because
11 there's a gun in the bathroom." Somebody tells him. There
12 are other people in the house.

13 These are all valid, sensible scenarios which
14 could account for him knowing about the gun without having
15 to have ever possessed it or put it there. I mean, this is
16 a place that certainly could have had a gun somewhere in the
17 house.

18 But once again, I want to stress that you can't
19 then turn this around and say, well, you know, Mr. Pate
20 didn't testify. They didn't prove the state of his
21 knowledge. We don't have to prove anything. They got to
22 prove their case beyond a reasonable doubt. They got to
23 prove that his phone calls demonstrate that he knew the gun
24 was there and he put it there, that he possessed it.

25 And so I suggest to you that he could have known

1 that there was a gun in the bathroom from several scenarios,
2 from somebody seeing it, somebody telling him. And this
3 certainly is a house where finding -- this isn't a house
4 where it would seem to be outrageous or remarkable that
5 there might be a gun in the house.

6 You know, we heard the testimony from police
7 officers about this being a problem, trouble house, police
8 calls, a lot of activity.

9 We've got this whole piece about this Leon thing,
10 this Leon guy, his association with the house.

11 We've got the daughter Morgan, 17-year-old problem
12 child, who's got shotgun shells inside a sock, inside a
13 sock, inside a storage container up in her bedroom, and
14 what's this 17-year-old doing with shotgun shells being
15 stashed up in her bedroom? What's that all about? Where's
16 that follow-up investigation? So what's going on with
17 Morgan and her problems?

18 And ask yourself: Why is a federal ATF agent,
19 Agent Williamson, going down to interview this teenager in
20 the middle of the afternoon with a St. Paul police officer,
21 an ATF agent going to the house in the middle of the
22 afternoon?

23 So, this is a trouble house where they may just
24 happen to have a gun and it may have ended up in the
25 bathroom and Mr. Pate may have found out about it by the

1 time he's at the police station.

2 Neighbor Moua testified: Scared of the occupants
3 of the house, problems with the house.

4 And then consider that when Mr. Pate is arrested,
5 they put Amy Navarro, the adult living in the house, in the
6 back of the squad car with him and they drive the two of
7 them down to the police station together. Might she have
8 said something to him?

9 So, it's very plausible that he could have found
10 out about a gun in the bathroom from a number of manners and
11 that he was concerned about it enough that by the time he
12 gets down to the jail he's foolishly making these phone
13 calls which are obviously being recorded, but that is what
14 it is. But again, that doesn't prove that just because he's
15 got the knowledge that he put the bullets -- that he put the
16 gun there or that he ever possessed it.

17 Now, I will finish up here shortly, but I've got
18 to talk about a couple of important constitutional
19 considerations for you as jurors to take into account.

20 Really, the bedrock of our criminal justice system
21 is the jury system and we trust jurors to make the correct
22 decisions. When we put a citizen on trial in this country,
23 we don't let prosecutors, police officers or even judges
24 make those decisions. We ask jurors to come in, take a look
25 at the evidence, and we ask the jurors because of the

1 instructions to remain skeptical, be thorough, and do not
2 convict a person unless the Government has proved its case
3 beyond a reasonable doubt, and that's fair. I mean, that's
4 the way the system works and it's a good system, and we
5 trust jurors and we trust your collective wisdom. But when
6 the Government fails in its proof, you shouldn't hesitate to
7 return a verdict of not guilty and you should never fill in
8 the gaps for them when they leave questions and reasonable
9 doubts in a case.

10 Mr. Pate starts off with the presumption of
11 innocence. The presumption of innocence is in conjunction
12 with the necessity of convicting only with proof beyond a
13 reasonable doubt really two of the most important
14 constitutional individual rights that we hold, and that
15 means that you as jurors kind of have to live up to your
16 duty, which you all will, and you have to presume Mr. Pate
17 innocent. And that means that just because he's brought
18 into trial and it's the Federal Government, they got an
19 indictment, that you're not going to hold that against him,
20 and you're going to presume him innocent until and unless
21 the Government proves its case beyond a reasonable doubt.
22 And that means when you're evaluating the evidence, it's
23 fair to say, well, yeah, but what about the presumption of
24 innocence? Well, he made phone calls, but, you know,
25 presumption of innocence. Maybe he just knew about it but

1 didn't possess it. You got to apply the presumption of
2 innocence. You've got to give it some life, life in your
3 deliberations.

4 And one way to think about the presumption of
5 innocence, it's a big shield which protects us as citizens
6 against the Government. And the Government, you know, they
7 present evidence and they chip at the shield and they break
8 off part of the shield and they chip and they do this, but
9 as long as there's any little part of that presumption of
10 innocence left, then you must find the defendant not guilty.

11 And what all this means is that the Government, to
12 present a case with proof beyond a reasonable doubt, they
13 got to shatter that shield. They got to blow it up.
14 They've got to overwhelm you with evidence. They've got to
15 drive it home so that you as jurors, you don't have second
16 thoughts.

17 This is one of the most important decisions you're
18 going to ever make, certainly the most important decision
19 anyone's going to make on behalf of Mr. Pate. You don't get
20 a chance to second-guess. You can't call up next week and
21 say, "Well, you know, I've been thinking about it. Maybe
22 there is something to that. Maybe they didn't prove the
23 case beyond a reasonable doubt." You got one shot at it.
24 You don't fill in the gaps for the Government. It's one of
25 the most important decisions you're ever going to make here.

1 And that's why proof beyond a reasonable doubt, in
2 a sense it protects you, because you should never have
3 second thoughts. If you've got second thoughts, that's
4 reasonable doubt, not guilty. Simple as that. It's for
5 your protection so that you don't have to question. And any
6 time a jury returns a verdict of not guilty, you ought to
7 feel good about it. The Government didn't present their
8 case. The contrary is true. If you start cutting gaps for
9 the Government, cutting corners, filling in the evidence for
10 them when they didn't prove the case beyond a reasonable
11 doubt, the whole system suffers.

12 Proof beyond a reasonable doubt, it is what it
13 sounds like, that you got -- it's beyond a reasonable doubt.
14 It's not up to the threshold, it's not close to it. They
15 got to take you over and beyond a reasonable doubt. Get all
16 the reasonable doubt out of the way so that you don't have
17 any second-guessing.

18 And I akin this sometimes to a guy who's in charge
19 of setting up the safety netting on a skyrise development,
20 and they're building and he's got to put the safety nets up
21 there. Well, that guy in charge of the safety nets, he's
22 going to put the safety nets up there and he's going to
23 double-check them, he's going to triple-check them, and he's
24 going to back them up with a secondary device if the first
25 one fails, because people are going to die if they fall off

1 a skyrise into the safety net. Then you're going to throw
2 some stuff into the safety net and you're going to jump into
3 it yourself. So you're going to have that satisfaction of
4 looking at the evidence beyond a reasonable doubt to make
5 sure you're not making a mistake, and that's really what
6 it's about. The Government's supposed to overwhelm you with
7 evidence and not leave any doubt and there's doubt left in
8 this case.

9 Before I sit down here -- I mean, there's a few
10 things that I didn't touch on here and I'll -- you know,
11 this whole squad video where his identity is -- maybe he's
12 playing games with Officer Nelson, whatever. He says:
13 "Talk to my brother. Talk to this other officer." That's a
14 side show. I mean, that's really got nothing to do with it
15 here.

16 And this bit of you being asked to be mouth
17 readers, you know, give it what weight you want, but it is
18 what it is. But there's certainly things like that and
19 other issues that I didn't touch upon, but you're all
20 reasonable, you can understand what my position would be on
21 it.

22 So, I sit down, I don't get the last word, but if
23 there's anything I haven't touched upon, it's not that I
24 didn't think it was important. It's just that I can't talk
25 forever up here. So there's a few things that I didn't

1 mention, but you know what our position is going to be on
2 these things and I'd ask that you just be, you know,
3 reasonable when you consider these things because I don't
4 get the last word in here.

5 But at the end of the day there's a very simple
6 explanation for what took place with Mr. Pate and he gets
7 jammed up for a shooting that he wasn't involved in. He
8 tells the police that right away. He ends up at the police
9 station. He's desperate because he knows there's a gun in
10 the bathroom. He wants to get it out of there. He makes
11 these calls to get it out of there, not because he possessed
12 it, not because it was his, but because he knows he's going
13 to get jammed up with it, which is exactly what's taking
14 place here. Then he goes down the next day and he's, you
15 know, 40 minutes into explaining to this officer what
16 happened and he gets frustrated and he makes a few
17 unremarkable, undetailed statements, but he insists he
18 didn't have a gun, didn't possess it, didn't get to it,
19 didn't use it, consistently.

20 The Government hasn't proven this simple scenario,
21 his statement just at the tail end of getting through it for
22 the day and just thinking he was going to take the heat for
23 something that wasn't his. It's certainly not a confession
24 to this .38 caliber gun and the lack of detail is only the
25 responsibility of the police officers. You shouldn't be

1 filling in for them.

2 The Government didn't prove its case beyond a
3 reasonable doubt and therefore I'm going to ask that you
4 return a verdict of not guilty.

5 Thank you.

6 THE COURT: Because the prosecution has the burden
7 of proof, they have the opportunity for the final word, so
8 we'll hear from Mr. Paulsen by way of a brief rebuttal
9 argument.

10 **GOVERNMENT'S CLOSING ARGUMENT IN REBUTTAL**

11 MR. PAULSEN: Well, defense counsel is doing his
12 job and he tells you to discount the jail calls because it's
13 hypothetically possible that Mr. Pate is talking about
14 somebody else's gun. The problem is, at the risk of
15 repeating myself, he says over and over and over on those
16 tapes: "It's my money. It's my money," which "money" is
17 "gun." "It's my gun." If he was trying to get rid of
18 somebody else's gun, number one, why would he even bother,
19 but number two, he wouldn't -- knowing he's on a recorded
20 jail phone, he wouldn't in reference to somebody else's gun
21 say, "It's my gun." It just didn't make sense.

22 Then doing his job to try to negate the
23 confession, he suggests, well, maybe the officers
24 intimidated him. Well, I mean, you heard that call. It's a
25 long call -- or recorded interview. It's a long interview.

1 They're very polite. They read him his rights at the
2 beginning. They make sure he wants to talk to them right
3 then. You know, they thought he might have just woken up.
4 They make sure he's okay, they read him his rights, they let
5 him tell his whole story about how he claims the shooting
6 went down that day, and then at the end they ask him if he
7 wants to talk about the gun. I mean that's almost -- in a
8 way it's almost an afterthought, because they already knew
9 from listening to the jail calls that it was his gun and
10 they knew that going in. But they ask him about the gun.
11 They didn't browbeat him, they didn't twist his arm, they
12 let him talk, and he said the things he said. There's no
13 intimidation, there's no coercion.

14 And the reason Mr. Pate confessed to the gun is
15 because he knew they found the gun. All he wanted to try to
16 beat was the aggravated assault and that's why he kept
17 saying over and over again, you know, "I didn't shoot. If I
18 could have gotten to it, I would've, but I didn't have it on
19 me," because he's trying to beat the aggravated assault. He
20 knows he's done on the felon in possession. He doesn't even
21 fight with them on that. And that's all he's charged with
22 here.

23 So, there's all this talk about there should have
24 been more forensics to try to prove up an aggravated assault
25 case, but we're not here on an aggravated assault case.

1 We're here on a felon in possession. And they did the
2 forensics. They sent the gun in for fingerprint testing.
3 There weren't any prints on it, only unidentifiable smudges.
4 They sent it in for DNA testing. There was no useable DNA
5 on it. Well, why weren't there any prints on it? Well, two
6 reasons. One, Mr. Pate had those gloves, and when you go
7 out to do a shooting, you're going to wear gloves. You
8 don't want to leave prints on your gun.

9 Plus, when he got to XXX XXXXXXXX, where did he go
10 to hide this gun? You think it's just a coincidence he hid
11 it in the bathroom? No, he went to the bathroom for a
12 reason, because when you're in the bathroom, you can take
13 any empty casings and you can flush them down the toilet so
14 they won't be found, because casings, as the expert said,
15 can tie you to a crime scene. And if you're in a bathroom
16 and if you're worried about having gunshot residue on your
17 hands, you can wash up. In a bathroom you got a towel. You
18 can wipe that gun clean. And that's what Pate says on the
19 recorded call to Vanessa. He says, "My prints won't be on
20 it. It's clean." How does he know it's clean? He cleaned
21 it.

22 And most fundamentally, if it's not his gun, how
23 does he know it's hidden in the clothes hamper? He knows
24 it's hidden in the clothes hamper because he cleaned it off
25 and he put it in the clothes hamper.

1 So, I mean, we're accused of giving up on proving
2 something we told you at the beginning we weren't even going
3 to try to prove. We don't have the burden of proving that.
4 We brought out evidence about that shooting incident to give
5 you background and context and to explain what was going on
6 that day, but I told you from day one, you know, this is
7 felon in possession. That's the only thing we have to
8 prove, and we have proven that.

9 As far as the hoodie behind the couch, again, it's
10 not something we have to prove, but we brought that out not
11 to prejudice Mr. Pate, but because Geovanny said there were
12 two men wearing hoodies that were shooting at another man.
13 And you go over to XXX XXXXXXXXX and what do you find? You
14 find one man in the car that's still running, Mr. Paxton,
15 still wearing his black hoodie. You find Mr. Pate, who's
16 running into XXX XXXXXXXXX. At some point -- again, this is
17 nothing you have to decide, but at some point it appears
18 like he took off his black hoodie, hid it behind the couch,
19 and then he changed his appearance and he thinks he's going
20 to get away with it. That's evidence you can think about,
21 but it has nothing to do with whether or not we've proven
22 felon in possession of a firearm.

23 And this thing about Morgan, I showed you this
24 transcript before. This is the one where he's talking to --
25 Lewis Pate is talking to his brother Chris, and he says:

1 "Grab, grab my li'l change, man. Put that shit up, and ask
2 Morgan where that other shit at." Well, what was found in
3 Morgan's bedroom? Shotgun shells. He's not charged with
4 shotgun shells, we don't have to prove that those were his
5 shotgun shells, but it's a little bit funny that he's asking
6 his brother to check with Morgan to find out about that
7 other shit.

8 So, when we talk about reasonable doubt, we talk
9 about the same standard of proof that is used in every
10 courtroom across the country and has been used across the
11 country for over 200 years. It's the same standard that
12 every jury in your position has to apply and it's a very
13 simple standard. It is not -- the judge will tell you it's
14 not beyond all possible doubt. It's not the mere
15 possibility of innocence. Let me repeat that. It's not the
16 mere possibility of innocence. The test is reasonable
17 doubt, and reasonable doubt is a doubt based upon reason and
18 common sense.

19 So I'm suggesting to you that when you go back to
20 the jury room you take with you all the exhibits, although
21 my guess is the judge probably will not have the bullets go
22 back, at least not at the same time as the gun is back
23 there, so don't worry about that. But you take back all the
24 exhibits, you take your memory of the testimony, but the
25 most important thing you take with you is your good common

1 sense, and if your common sense tells you, yes, Mr. Pate
2 possessed that gun on the day in question, then your verdict
3 must be guilty.

4 Thank you.

5 THE COURT: Thank you.

6 We will take a five-minute recess before my final
7 instructions to you. Court will be in recess for five
8 minutes.

9 (Recess taken at 11:18 a.m.)

10 * * * * *

11 (11:27 a.m.)

12 IN OPEN COURT

13 THE COURT: Good morning again. Please be seated.

14 The courtroom is locked during the giving of jury
15 instructions, so if either spectator thinks they need to
16 leave in the next 20 minutes or so, you should leave now or
17 you'll be stuck.

18 **COURT'S INSTRUCTIONS TO THE JURY**

19 THE COURT: Members of the Jury:

20 Now that you have heard all of the evidence to be
21 received in this case and the arguments of counsel, it
22 becomes my duty to give you the final instructions of the
23 Court as to the law which is applicable to this case and
24 which should guide you in your decisions.

25 All of the instructions given to you by the

1 Court -- those I gave you at the beginning of the trial,
2 those I gave you during the trial itself, and this final set
3 of instructions -- must guide and govern your deliberations.
4 This set of instructions I am about to give you are in
5 writing and will be available to you in the jury room, so
6 you really don't need to take any notes, but if you want to,
7 of course you can. I want to emphasize, though, that just
8 because they are in writing doesn't mean that they are any
9 more important than my earlier instructions. Again, all
10 instructions, whether or not given to you in writing, must
11 be followed by the jury.

12 Now, it is your duty as jurors to follow the law
13 as stated in these instructions of the Court and to apply
14 the rules of law to the facts as you find them from the
15 evidence which was received during the trial.

16 The lawyers have quite properly referred to some
17 of the applicable rules of law in their closing arguments to
18 you, but if there's any difference that appears to you
19 between the law as stated to you by counsel and that I'm
20 giving you, you are of course to be governed by the Court's
21 instructions.

22 You are also not to single out any one instruction
23 alone as stating the law, but you should consider these
24 instructions as a whole in reaching your decision.

25 You are also not to be concerned with the wisdom

1 of any rule of law stated by the Court. Regardless of any
2 opinion you might have as to what the law ought to be, it
3 would be a violation of your sworn duty to base your verdict
4 upon any view or opinion of the law other than that given in
5 these instructions of the Court, just as it would be a
6 violation of your sworn duty as judges of the facts to base
7 your verdict upon anything other than the evidence received
8 in the case.

9 You were chosen as jurors for this trial in order
10 to evaluate all of the evidence received and to decide the
11 factual questions presented by the allegations brought by
12 the Government in the indictment and the plea of not guilty
13 by Lewis Pate.

14 In deciding the issues presented to you for
15 decision in this trial, you must not be persuaded by any
16 bias, prejudice, or sympathy for or against any of the
17 parties to this case or by any public opinion.

18 Justice through trial by jury depends upon the
19 willingness of each individual juror to seek the truth from
20 the same evidence presented to all of the jurors here in the
21 courtroom and to arrive at a verdict by applying the same
22 rules of law as being given to each of you in these
23 instructions of the Court.

24 Now, there is nothing particularly different in
25 the way that a juror should consider the evidence in a trial

1 from that in which any reasonable and careful person would
2 treat any very important question that must be resolved by
3 examining facts, opinions, and evidence. You are expected
4 to use your good sense in considering and evaluating the
5 evidence in the case for only those purposes for which it
6 was received and to give the evidence a reasonable and fair
7 construction in light of your own common knowledge of the
8 natural tendencies and inclinations of human beings.

9 If Lewis Pate be proved guilty beyond a reasonable
10 doubt, say so. If not proved guilty beyond a reasonable
11 doubt, say so.

12 Keep constantly in mind that it would be a
13 violation of your sworn duty to base a verdict upon anything
14 other than the evidence which was received in this case and
15 the instructions of the Court. Remember as well that the
16 law never imposes upon the defendant in a criminal case the
17 burden or duty of calling any witnesses or producing any
18 evidence, because the burden of proving guilt beyond a
19 reasonable doubt is always assumed by the Government.

20 Now, you have been allowed to take notes during
21 the course of the trial and I've noticed that many of you
22 have, and you may take your notes with you to the jury room.
23 But you should not consider your notes as binding or
24 conclusive, whether they are your notes or those of a fellow
25 juror. Your notes should be used as an aid for your memory,

1 not a substitute for your memory. You should not give
2 greater weight to a particular bit of evidence solely
3 because you or someone chose to reduce it to writing. I
4 want to make clear to you that it's your recollection of the
5 evidence which should control, and you should disregard
6 anything contrary to your own recollection which might
7 appear in either your notes or those of one of your fellow
8 jurors.

9 The evidence in this case consists of the sworn
10 testimony of the witnesses, regardless of who may have
11 called those witnesses, all of the exhibits which were
12 received in evidence, regardless of who may have produced
13 the exhibit, and all facts which have been admitted to or
14 stipulated to.

15 When attorneys on both sides stipulate or agree as
16 to the existence of a fact, you may accept that stipulation
17 as evidence and regard that particular fact as having been
18 proved. You are not required to do so, however, since you,
19 again, as the jury are the sole judges of the facts.

20 Any proposed testimony or proposed exhibits to
21 which an objection was sustained by the Court and any
22 testimony or exhibit stricken by the Court must be entirely
23 disregarded by the jury.

24 And also, anything you may have heard or seen
25 elsewhere outside of this courtroom about the case is not

1 proper evidence and it too must be entirely disregarded.

2 The questions, objections, statements, and even
3 the arguments of counsel are not the evidence in this case,
4 and you must base your base your verdict upon only the
5 evidence received in the case. In your consideration of the
6 evidence which was received, however, you are not limited to
7 the bald statements of the witnesses or the bald assertions
8 in the exhibits. In other words, you are not limited solely
9 to what you see and hear as the witnesses testify or the
10 exhibits are admitted. You are permitted to draw from the
11 facts which you find to have been proved such reasonable
12 inferences as you feel are justified in light of your own
13 experience and common sense.

14 Inferences are simply deductions or conclusions
15 which reason and common sense lead the jury to draw from the
16 evidence received in the case.

17 Now, there are two types of evidence which are
18 generally present during the course of the trial. One of
19 those is called direct evidence and the other is known as
20 circumstantial evidence. Direct evidence is the testimony
21 of a person who asserts or claims to have actual knowledge
22 of a fact. Sometimes we call these eyewitnesses.
23 Circumstance evidence, on the other hand, is proof of a
24 chain of facts and circumstances indicating the existence of
25 a fact. The law makes absolutely no distinction between the

1 weight or the value to be given to direct or circumstantial
2 evidence. Nor is a greater degree of certainty required of
3 circumstantial evidence than of direct evidence. You should
4 weigh all of the evidence in the case, and after weighing
5 all the evidence, if you are not convinced of the guilt of
6 Lewis Pate beyond a reasonable doubt, you must find him not
7 guilty.

8 If any reference by counsel to matters of
9 testimony or exhibits does not coincide with your own
10 recollection of the evidence, it is your recollection which
11 should control during the deliberations and, again, not the
12 statements of counsel, because you, as I've told you several
13 times now, are the sole judges of the facts in this case.

14 The questions asked by a lawyer for either party
15 to this case are also not evidence. If a lawyer asks a
16 question of a witness which contains an assertion of fact,
17 therefore, you may not consider the assertion by the lawyer
18 as any evidence of that fact. Another way of saying this
19 would be only the answers are evidence.

20 There have been some charts or summaries which
21 have been prepared by the parties, have been submitted into
22 evidence and were discussed during the trial, and they've
23 been shown to you during the trial for the purpose of
24 explaining facts that are allegedly included in books,
25 records, or other documents which are also in evidence in

1 this case. You may consider any charts or summaries as you
2 would any other evidence admitted during the trial and give
3 them such weight or importance, if any, that you feel they
4 deserve.

5 You, as the jury, are the sole and exclusive
6 judges of the credibility of each of the witnesses called to
7 testify in this case and only you determine the importance
8 or the weight that their testimony deserves. After making
9 your assessment concerning the credibility of a witness, you
10 may decide to believe all of that witness's testimony, only
11 a portion of it, or none of it.

12 In making your assessment, you should carefully
13 scrutinize all of the testimony given, the circumstances
14 under which each witness has testified, and every matter in
15 evidence which tends to show whether a witness, in your
16 opinion, is worthy of belief. Consider each witness's
17 intelligence, motive to falsify, state of mind, and
18 appearance and manner while on the witness stand. Consider
19 also the witness's ability to observe the matters as to
20 which he or she has testified and whether he or she
21 impresses you as having an accurate memory or recollection
22 of these matters. Consider also any relation a witness may
23 bear to either side of the case, the manner in which each
24 witness might be affected by your verdict, and the extent to
25 which, if at all, each witness is either supported by or

1 contradicted by other evidence in the case.

2 Now, inconsistencies or discrepancies in the
3 testimony of a witness or between the testimony of different
4 witnesses may or may not cause you to disbelieve or
5 discredit such testimony. Two or more persons witnessing an
6 incident or a transaction may simply hear or see it
7 differently. Innocent misrecollection, just like failure of
8 recollection, is not an uncommon experience. In weighing
9 the effect of a discrepancy, however, always consider
10 whether it pertains to a matter of importance or an
11 insignificant detail and consider whether that discrepancy
12 results from an innocent error or an intentional falsehood.

13 After making your own judgment or assessment
14 concerning the believability of a witness, you can then
15 attach such importance or weight to that testimony, if any,
16 that you feel it deserves. You will then be in a position
17 to decide whether or not the Government has proven the
18 charge beyond a reasonable doubt.

19 You have heard during the course of this trial the
20 testimony of several law enforcement officers. The fact
21 that a witness may be employed as a policeman or law
22 enforcement officer does not mean that that testimony is
23 necessarily deserving of more or less consideration or
24 greater or lesser weight than the testimony of an ordinary
25 witness.

1 At the same time, it is quite legitimate for
2 defense counsel to try to attack the credibility of a law
3 enforcement witness on the grounds that his testimony may be
4 colored by a personal or professional interest in the
5 outcome of the case.

6 It is your decision, after reviewing all of the
7 evidence, whether to accept the testimony of a law
8 enforcement witness and to give to that testimony whatever
9 weight, if any, you find it deserves.

10 The testimony of a witness may be discredited or,
11 as we sometimes say, impeached, by showing that that witness
12 previously made statements which are different than or
13 inconsistent with that testimony here in court. The earlier
14 inconsistent or contradictory statements are admissible only
15 to discredit or impeach the credibility of the witness, and
16 not to establish the truth of these earlier statements made
17 somewhere other than here during this trial. It is the
18 province of the jury to determine the credibility of a
19 witness who has made prior inconsistent or contradictory
20 statements.

21 If a person is shown to have knowingly testified
22 falsely concerning any important or material matter, you
23 obviously have a right to distrust the testimony of such an
24 individual concerning other matters. You may reject all of
25 the testimony of that witness or you may give it such weight

1 or credibility as you think it deserves.

2 Your decision on the facts of this case should not
3 be determined by the number of witnesses testifying for or
4 against a party. You should consider all of the facts and
5 circumstances in evidence to determine which of the
6 witnesses you choose to believe or not believe. You may
7 find that the testimony of a smaller number of witnesses on
8 one side is more credible than the testimony of a greater
9 number of witnesses on the other side.

10 The defendant in a criminal case has an absolute
11 right under our Constitution not to testify.

12 The fact that Lewis Pate did not testify may not
13 be discussed or considered by the jury in any way when
14 deliberating and arriving at your verdict. No inference of
15 any kind may be drawn from the fact that a defendant decided
16 to exercise his privilege under the Constitution and did not
17 testify.

18 As stated before, the law never imposes upon a
19 defendant in a criminal case the burden or duty of calling
20 any witnesses or producing any evidence.

21 The rules of evidence ordinarily do not permit
22 witnesses to testify as to their own opinions or their own
23 conclusions about the issues in this case, but there is an
24 exception to this rule for witnesses who are described as
25 expert witnesses. An expert witness is someone who, by

1 education and experience, may have become knowledgeable in
2 some technical, scientific, or specialized area. If such
3 knowledge or experience may be of assistance to you in
4 understanding some of the evidence or in determining a fact,
5 an expert witness in that area may state an opinion as to
6 relevant and material matter in which he or she claims to be
7 an expert.

8 You should consider each expert opinion received
9 in evidence in this case and give it such weight as you
10 think it deserves. You should consider the testimony of
11 expert witnesses just as you would consider the testimony of
12 other witnesses and other evidence in the case. If you
13 should decide that the opinion of an expert witness is not
14 based upon sufficient education or experience, or if you
15 should conclude that the reasons given in support of the
16 expert opinion are not sound, or if you should conclude that
17 the expert opinion is outweighed by other evidence,
18 including that of other expert witnesses, you may disregard
19 the opinion in part or in its entirety.

20 As I have told you several times, you are the sole
21 judges of the facts in this case.

22 Now, Lewis Pate is not on trial for any acts or
23 crimes which are not specifically alleged in the indictment.
24 Nor may a defendant be convicted of the crime charged even
25 if you were to find that he committed other crimes.

1 The indictment in this case charges that
2 Lewis Pate committed the crime of being a felon in
3 possession of a firearm. As you know, Mr. Pate has pled not
4 guilty to that charge.

5 As I told you at the beginning of the trial, an
6 indictment is simply an accusation. It is not evidence of
7 anything. To the contrary, Lewis Pate is presumed to be
8 innocent. Thus Lewis Pate, even though charged, began the
9 trial with no evidence against him and the presumption of
10 innocence alone is sufficient to find Lewis Pate not guilty
11 and can be overcome only if the Government proves, beyond a
12 reasonable doubt, each essential element of the crime
13 charged.

14 Again, there is no burden upon a defendant to
15 prove that he is innocent.

16 I instruct you that you must presume Lewis Pate to
17 be innocent of the crime charged. Thus Lewis Pate, although
18 accused of crimes in the indictment, began the trial with a
19 clean slate -- that is, with no evidence against him. The
20 indictment is not evidence of anything and the law permits
21 nothing but legal evidence presented before the jury here in
22 court to be considered in support of any charge against
23 Lewis Pate. The presumption of innocence alone therefore is
24 sufficient to acquit the defendant.

25 The burden is always upon the prosecution to prove

1 guilt beyond a reasonable doubt. This burden never shifts
2 to a defendant, for the law never imposes upon a defendant
3 in a criminal case the burden or duty of calling any
4 witnesses or producing any evidence. The defendant is not
5 even obligated to produce any evidence by cross-examining
6 the witnesses for the Government.

7 Now, it is not required that the Government prove
8 guilt beyond all possible doubt. The test is one of
9 reasonable doubt. A reasonable doubt is a doubt based upon
10 reason and common sense, and not the mere possibility of
11 innocence. A reasonable doubt is the kind of doubt that
12 would make a reasonable person hesitate to act. Proof
13 beyond a reasonable doubt must, therefore, be proof of such
14 a convincing character that a reasonable person would not
15 hesitate to act and rely upon it in the most important of
16 his or her own affairs.

17 Unless the Government proves, beyond a reasonable
18 doubt, that the defendant has committed each and every
19 element of the crime charged in the indictment, you must
20 find Lewis Pate not guilty of that offense. If the jury
21 after careful and impartial consideration of all of the
22 evidence in this case views the evidence as reasonably
23 permitting either of two conclusions -- one of not guilty
24 and the other of guilty -- the jury must, of course, adopt
25 the conclusion of not guilty.

1 I'm going to read you once again the indictment in
2 this case. It reads as follows:

3 The United States Grand Jury charges that on or
4 about March 20, 2012, in the State and District of
5 Minnesota, the defendant, Lewis Pate, having previously been
6 convicted of one or more crimes punishable by imprisonment
7 for a term exceeding one year, knowingly possessed in and
8 affecting interstate commerce a firearm, namely an Enfield
9 Model 2, Mark 1 .38 caliber revolver, in violation of Title
10 18, United States Code, Section 922(g)(1) and 924(e).

11 Title 18, United States Code, Section 922(g),
12 provides in relevant part: "It shall be unlawful for any
13 person who has been convicted in any court, of a crime
14 punishable by imprisonment for a term exceeding one year,
15 to possess in or affecting commerce, any firearm."

16 It is a crime for a felon to possess a firearm, as
17 charged in Count 1 the indictment. This crime has three
18 elements, which are:

19 One, the defendant had been convicted of a crime
20 punishable by imprisonment for more than one year;

21 Two, after that, the defendant knowingly possessed
22 a firearm, that is, an Enfield Model 2, Mark 1 .38 caliber
23 revolver; and

24 Three, the firearm was transported across a state
25 or international line at some time during or before the

1 defendant's possession of it.

2 You are instructed that the Government and
3 Lewis Pate have agreed that Lewis Pate has been convicted of
4 a crime punishable by imprisonment for more than one year
5 under the laws of Minnesota, and you must consider the first
6 element as having been proven.

7 If you have found beyond a reasonable doubt that
8 the firearm in question was manufactured in a state or
9 country other than Minnesota, and that the defendant
10 possessed that firearm in the state of Minnesota, then you
11 may, but are not required to, find that it was transported
12 across a state line.

13 The term "firearm" means any weapon (including a
14 starter gun) which will or is designed to or may be readily
15 converted to expel a projectile by the action of an
16 explosive.

17 If all of these elements have been proved beyond a
18 reasonable doubt as to Lewis Pate, then you must find
19 Lewis Pate guilty of the crime charged under Count 1 of the
20 indictment; otherwise, you must find Lewis Pate not guilty
21 of this offense.

22 Now, the law recognizes several kinds of
23 possession. A person may have actual possession or
24 constructive possession. A person may also have sole
25 possession or joint possession.

1 A person who knowingly has direct physical control
2 over a thing, at a given time, is then in actual possession
3 of it.

4 A person who, although not in actual possession,
5 has both the power and the intention at a given time to
6 exercise dominion or control over a thing, either directly
7 or through another person or persons, is then in
8 constructive possession of it.

9 If one person alone has actual or constructive
10 possession of a thing, possession is sole. If two or more
11 persons share actual or constructive possession of a thing,
12 possession is joint.

13 Whenever the word "possession" has been used in
14 these instructions, it includes actual as well as
15 constructive motion, and also sole as well as joint
16 possession.

17 The indictment charges, as you may have heard,
18 that the offense was committed "on or about" a certain date.

19 Although it is necessary for the Government to
20 prove beyond a reasonable doubt that the offense was
21 committed on a date reasonably near the date alleged in the
22 indictment, it is not necessary for the Government to prove
23 that the offense was committed precisely on the date
24 charged.

25 Upon next retiring to your jury room to begin your

1 deliberations, you should select one of your members to act
2 as your presiding juror. The presiding juror will preside
3 over your deliberations and will become your spokesperson
4 here in court.

5 Now, your verdict must represent the collective
6 judgment of the jury. In order to return a verdict, it is
7 necessary that each juror agree to it. In other words, your
8 verdict must be unanimous.

9 It is your duty as jurors to consult with one
10 another and to deliberate with one another with a view
11 towards reaching an agreement if you can do so without
12 violence to your own individual judgment. Each of you must
13 decide the case for himself or herself, but only after an
14 impartial consideration of the evidence in the case with
15 your fellow jurors. In the course of your deliberations, do
16 not hesitate to reexamine your own views and change your
17 opinion if convinced that it is erroneous. On the other
18 hand, do not surrender your honest conviction solely because
19 of the opinion of your fellow jurors or for the mere purpose
20 of returning a verdict.

21 Remember at all times that you are not partisans,
22 you are judges, judges of the facts of this case, and your
23 sole interest should be to seek the truth from the evidence
24 received during the trial.

25 Your verdict, again, must be based solely upon the

1 evidence received in the case. Nothing you have seen or
2 read outside of court may be considered. Nothing that I
3 have said or done during the course of this trial is
4 intended in any way to somehow suggest to you what I think
5 your verdict should be. Nothing said in these instructions
6 and nothing in any form of verdict prepared for your
7 convenience is to suggest or convey to you in any way or in
8 any manner any intimation as to what verdict I think you
9 should return, because, of course, what the verdict shall be
10 is the exclusive duty and responsibility of the jury. As I
11 have told you many, many times, you are the sole judges of
12 the facts.

13 Now, the punishment provided by law for the
14 offense charged in this indictment is a matter exclusively
15 within the province of the Court and should never be
16 considered by the jury in any way in arriving at an
17 impartial verdict as to the offense charged.

18 We have prepared a form of verdict for your
19 convenience and I'll read it to you. It's very
20 straightforward and simple. It has the case caption on it.

21 "United States District Court, District of
22 Minnesota.

23 "United States of America, Plaintiff, versus
24 Lewis Pate, Defendant."

25 It has the case criminal number and my initials as

1 having been the judge assigned to the case.

2 And I'm looking at the wrong form, but it begins
3 the same way. It reads:

4 "We, the Jury in the above-titled matter, find the
5 Defendant, Lewis Pate" -- and you'll write either the words
6 "Not Guilty" or the word "Guilty" -- "of the crime charged
7 in Count One of the Indictment.

8 And it has a signature block for your presiding
9 juror and a place to date the verdict.

10 You will take the form with you to the jury room
11 and, when you have reached a unanimous agreement as to your
12 verdict, you should have your presiding juror write your
13 verdict, fill in the blanks, sign and date the form, and
14 return with your verdict to the courtroom.

15 If for some reason it becomes necessary during
16 your deliberations to communicate with the Court, you may do
17 so by means of a note, signed by your presiding juror or by
18 one or more members of the jury, through the court security
19 officer. No member of the jury should ever attempt to
20 communicate with the Court by any means other than a signed
21 writing, and the Court will never communicate with any
22 member of the jury on any subject which touches the merits
23 of the case other than in writing or orally here in open
24 court.

25 You will note from the oath about to be taken by

1 the court security officers that they too, as well as all
2 other persons, are forbidden to communicate in any way or
3 any manner with any member of the jury which touches upon
4 the merits of this case.

5 Bear in mind you are never to reveal to any
6 person -- not even to the Court -- how the jury stands,
7 numerically or otherwise, on the question of whether or not
8 the Government has sustained its burden of proof until after
9 you have reached a unanimous verdict.

10 Members of the Jury, your duty is to both the
11 United States and to Lewis Pate, the defendant. They each
12 have a right to expect that you will see that justice is
13 done. Your responsibility must be borne courageously and
14 without fear or favor. It is not an arbitrary power, but
15 one that must be exercised with fairness, sincere judgment
16 and sound discretion.

17 The final test of the quality of your service will
18 lie in the verdict which you return to the Court, and not in
19 the opinions any one of you may hold as you retire from this
20 case. Remember at all times you are not partisans nor
21 advocates but triers of fact.

22 Counsel, do either of you wish to call to my
23 attention any errors, omissions or corrections given to the
24 jury?

25 Mr. Paulsen?

1 MR. PAULSEN: No, your Honor.

2 THE COURT: Mr. Olson?

3 MR. OLSON: No, your Honor.

4 THE COURT: The court security officer will unlock
5 the courtroom and come forward to be sworn.

6 (Court security officer sworn by the calendar clerk)

7 THE COURT: All right. Ms. Landmark and
8 Ms. Noark, by virtue of your numbers when the jury was
9 originally selected, you have served as the alternates in
10 this case. I want to thank you very much for being with us.
11 If we get down below 12, we get into trouble and have to
12 start all over, so I want to thank you. You've been our
13 safety valves here.

14 At this time I'm going to ask the two of you to
15 depart. You can remove any items you have from the jury
16 room and Gertie will bring you back to my chambers. I have
17 some certificates and want to thank you personally. So the
18 two of you may depart at this time and you should leave your
19 notebooks in there as well.

20 Ms. Landmark, you also are an alternate.

21 (Alternate jurors excused)

22 THE COURT: We will be sending in with you for
23 your use a copy of my instructions, all of the exhibits
24 which were received in evidence and a copy of the jury
25 verdict form. As Mr. Paulsen appropriately predicted, I

1 don't like you to have both the gun and the bullets for
2 obvious reasons. We have the same problems with narcotics
3 and such in there. So, I'm going to ask that you take a
4 quick look. Let's separate the bullet exhibit out first.
5 Why don't you take a look at those. We'll send the gun in
6 because there was more talk about that, I guess, and you can
7 have that, but if you want to take a quick look at the
8 bullets first if you need to see them and pass them out. If
9 you need for some reason to have them back later, let the
10 security officer know. Otherwise, he'll want you to look at
11 that first and hand that exhibit out to we can so we can
12 separate those two.

13 And then you can get started. I was going to have
14 you go right away to lunch. It usually is a good idea for
15 starters, but right at noon is absolutely the worst time to
16 try to get 12 people through the cafeteria downstairs. So
17 I'm going to suggest that you maybe select your presiding
18 juror and kind of organize your deliberations and then knock
19 on the door. If it's 1:215 or so, I'll think you'll get
20 through the cafeteria much faster and we will keep you
21 together now until you reach a verdict.

22 All right. All rise for the jury.

23 (Jury excused)

24 THE COURT: All right. Please be seated. We are
25 outside the presence of the jury.

1 Any matter the Court needs to address at this time
2 from the Government, Mr. Paulsen?

3 MR. PAULSEN: No. We have all our exhibits ready,
4 Mr. Olson's checked them out with me, and maybe should the
5 bullets go back now before lunch --

6 THE COURT: Yeah, I think the bullets, let's hand
7 those out, and then Ms. Williamson, if you'll wait around.

8 Jay, do you want to grab that exhibit and then
9 take it back to the CSO so they've got those, as I
10 instructed?

11 MR. OLSON: I think I left my exhibit. I know I
12 had it in my office, so it's not elsewhere. It must be
13 downstairs.

14 THE COURT: Okay. That was the --

15 MR. OLSON: Just the tape exhibit.

16 THE COURT: Okay. If you want to bring that right
17 up, that's fine, and those can go in right after lunch.

18 MR. PAULSEN: I have my copy of it. If you can't
19 find it, we could substitute, but yours has the original
20 sticker on it.

21 THE COURT: All right. And let's see. You both
22 are in the building, so we know how to locate you and I
23 think that concludes things.

24 All right. Court will be in recess.

25 (Jury begins deliberations at 12:04 p.m.)

1 (4:30 p.m.)

2 IN OPEN COURT

3 (Defendant present)

4 THE COURT: The jury should arrive momentarily.

5 (Jury enters)

6 THE COURT: Good afternoon. Please be seated.

7 Members of the Jury, have you reached your verdict
8 in this case?

9 THE FOREPERSON: We have.

10 THE COURT: Would you give it to the court
11 security officer, please.

12 (Verdict handed to the Court via the court security
13 officer)

14 (Pause - Court is reading)

15 THE COURT: Members of the Jury, listen to your
16 verdict as it will be recorded in the official files of the
17 United States District Court.

18 THE CLERK: "United States District, District of
19 Minnesota.

20 "United States of America, Plaintiff, versus Lewis
21 Pate, Defendant.

22 "Verdict.

23 "We, the Jury in the above-titled matter, find the
24 Defendant, Lewis Pate, guilty of the crime charged in Count
25 One of the Indictment."

1 Signed by the presiding juror and dated
2 August 15th, 2012.

3 THE COURT: Mr. Olson, should we poll the jury?

4 MR. OLSON: Yes, Your Honor.

5 THE COURT: Please.

6 THE CLERK: Members of the Jury, please answer yes
7 or no as I call your name.

8 Ms. Herzog, is this your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Ms. Dooley, is this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Ms. Bloodsaw, is this your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Ms. Landrum, is this your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Ms. Zufall, is this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Mr. Lillegraven, is this your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Mr. Manske, is this your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Ms. Gashaw, is this your verdict?

23 THE COURT: Mr. Gashaw.

24 THE CLERK: Mr. Gashaw.

25 THE JUROR: Yes.

1 THE CLERK: Ms. Perusse, is this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Ms. Noble, is this your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Ms. Tilmon, is this your verdict?

6 THE JUROR: Yes.

7 THE CLERK: And Mr. Watschke, is this your
8 verdict?

9 THE JUROR: Yes.

10 THE CLERK: The jury has been polled and they call
11 concur.

12 THE COURT: Thank you, Members of the Jury, for
13 your service in this case. Your task is now completed and
14 you may be excused. Please follow the court security
15 officer to the jury deliberation room.

16 (Jury excused)

17 THE COURT: Please be seated.

18 The jury has spoken through their verdict. I'll
19 order that there be a presentence investigation, Mr. Pate.
20 Mr. Smith is the gentleman seated at the second table and
21 he'll make sure that process gets started today.

22 Anything further from the Government?

23 MR. PAULSEN: No, Your Honor. Should we collect
24 the exhibits after the jury leaves?

25 THE COURT: Yes. Those will be brought to you.

1 Anything further, Mr. Olson?

2 MR. OLSON: No, Your Honor.

3 THE COURT: Court is in recess.

4 (Proceedings concluded at 4:35 p.m.)

5 [End of trial transcript]

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C E R T I F I C A T E

I, **TIMOTHY J. WILLETTE**, Official Court Reporter for the United States District Court, do hereby certify that the foregoing pages are a true and accurate copy of the transcript originally filed on **FEBRUARY 17, 2013**, incorporating redactions requested by **AUSA JEFFREY PAULSEN**. Redactions appear as "XXXX" in the transcript.

/s/ Timothy J. Willette

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